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Attorneys for Defendants and Third Party  
Defendants THOMAS DUNLAP  
INSURANCE AGENCY LLC; DEAN T.  
DUNLAP; THOMAS R. DUNLAP

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

STAR INSURANCE COMPANY, a  
Michigan corporation,

Plaintiff,

v.

SUNWEST METALS, INC., a  
California corporation,

Defendant.

CASE NO. SACV13-1930 DFM

**DATE: March 16, 2015**

**TIME: 9:00 a.m.**

**CTRM: 6A**

**OPPOSITION BY DEFENDANTS  
THOMAS DUNLAP INSURANCE  
AGENCY, LLC, THOMAS DUNLAP,  
AND DEAN DUNLAP TO MOTION IN  
LIMINE BY PLAINTIFF STAR  
INSURANCE COMPANY TO  
BIFURCATE THE TRIAL [Dkt 82]**

Trial: March 31, 2015  
Pre-Trial Conf.: March 16, 2015  
Complaint Filed: December 12, 2013  
3<sup>rd</sup> Party Cmp. February 6, 2014

AND RELATED COUNTER-  
ACTIONS, AND THIRD-PARTY  
COMPLAINT.

**I. ARGUMENT IN OPPOSITION**

Defendants, the Thomas Dunlap Insurance Agency, LLC, Thomas Dunlap,  
and Dean Dunlap (collectively “Dunlap”) oppose Plaintiff Star Insurance

1 Company's (Star) motion to bifurcate the trial. The motion is not well-founded  
2 because Star's improperly seeks to deprive Dunlap of a jury trial, bifurcation will  
3 not promote judicial efficiency, and the equitable issue should be addressed last.

4 **A. Bifurcation Must Be Denied Because Dunlap Has Not Waived Its**  
5 **Right to a Jury and Issues of Fact Are Common to the Legal and**  
6 **Equitable Claims**

7 Star asks the Court to first conduct a *bench* trial on Star's claims for  
8 rescission *and* its claim for negligent misrepresentation against Dunlap. [Dkt. 82 ,  
9 3:17-23; Dkt. 82-2, 2:1-3]. Dunlap, however, made a timely demand for a jury trial  
10 on June 20, 2014 [Dkt 37] and has not waived that right. (Ohira declaration ¶ 2, 3).  
11 Moreover, bifurcation is impractical because, as Star concedes, "many of the same  
12 facts, documents, and witnesses will be at issue since both sets of claims of all the  
13 same transaction, misrepresentations, and time period" [Dkt 82, 4:2-4]. Star's  
14 claims against Dunlap must be tried before a jury.

15 In federal courts the right to a jury cannot be dispensed-with except by the  
16 consent of the parties entitled to it and if, as here, issues of fact are common to both  
17 legal and equitable claims and a jury has been demanded on the issues material to  
18 the legal claim, a jury must be permitted to determine these issues prior to decision  
19 of the equitable claim:

20 In the Federal courts this [jury] right cannot be dispensed  
21 with, except by the assent of the parties entitled to it, nor  
22 can it be impaired by any blending with a claim, properly  
23 cognizable at law, of a demand for equitable relief in aid  
24 of the legal action or during its pendency." This long-  
25 standing principle of equity dictates that only under the  
26 most imperative circumstances, circumstances which in  
27 view of the flexible procedures of the Federal Rules we  
28 cannot now anticipate, can the right to a jury trial of legal

issues be lost through prior determination of equitable claims. See Leimer v. Woods, 196 F.2d 828, 833-836.

(Beacon Theatres v. Westover, 359 U.S. 500, 510-511, 79 S. Ct. 948; 3 L. Ed. 2d 988 (U.S. 1959).

When legal and equitable claims are joined in the same action, the trial judge has only limited discretion in determining the sequence of trial and "that discretion . . . must, wherever possible, be exercised to preserve jury trial." *Beacon*, 359 U.S. 500, 510, 3 L. Ed. 2d 988, 79 S. Ct. 948 (1959). "Only under the most imperative circumstances . . . can the right to a jury trial of legal issues be lost through prior determination of equitable claims." *Id.* at 510-11 (citation omitted). Dollar Systems, Inc. v. Avcar Leasing Systems, Inc., 890 F.2d 165, 170 (9th Cir. Cal. 1989).

**B. Star's Equitable Claim Should Be Tried Last.**

The Supreme Court has held that "where equitable and legal claims are joined in the same action, there is a right to jury trial on the legal claims which must not be infringed either by trying the legal issues as incidental to the equitable ones or by a court trial of a common issue existing between the claims." Ross v. Bernhard, 396 U.S. 531, 537-38; 90 S. Ct. 733, 24 L. Ed. 2d 729 (1970). Thus, where (as here) there are issues common to both the equitable and legal claims, "the legal claims involved in the action must be determined prior to any final court determination of [the] equitable claims." Dairy Queen, Inc. v. Wood, 369 U.S. 469, 479, 82 S. Ct. 894, 8 L. Ed. 2d 44 (footnote omitted). Otherwise, "prior non-jury trial of the equitable claims may infringe the right to jury trial on the legal claims because of the collateral estoppel or res judicata effect of a prior judicial determination of issues common to the two sets of claims." Calnetics Corp. v. Volkswagen of America, Inc., 532 F.2d 674, 690 (9th Cir.), cert. denied, 429 U.S. 940, 50 L. Ed. 2d 309, 97 S. Ct. 355 (1976)(citation omitted). Dollar Systems, Inc.

1 v. Avcar Leasing Systems, Inc., 890 F.2d 165, 170 (9th Cir. Cal. 1989).

2 **II. CONCLUSION**

3 Star's motion must be denied because it improperly seeks to deprive Dunlap  
4 of a jury trial on legal issues and, as Star concedes, there are issues common to both  
5 the equitable and legal claims.

6 Respectfully submitted,

7 Dated: March 9, 2015

8 ROPERS, MAJESKI, KOHN & BENTLEY

9 By: /s/ Michael T. Ohira

10 LAWRENCE BORYS

11 MICHAEL T. OHIRA

12 Attorneys for Defendants and Third Party

13 Defendants DUNLAP INSURANCE

14 AGENCY LLC; DEAN T. DUNLAP;

15 THOMAS R. DUNLAP

Ropers Majeski Kohn & Bentley  
A Professional Corporation  
Los Angeles

**DECLARATION OF MICHAEL T. OHIRA**

I, Michael T. Ohira, declare as follows:

1. I am a member of the State Bar of California admitted to practice before the United States District Court for the Central District of California and am an attorney with Ropers Majeski Kohn and Bentley, counsel of record herein for Defendants the Thomas Dunlap Insurance Agency, LLC, Thomas Dunlap, and Dean Dunlap. I offer this declaration in opposition to the motion by plaintiff Star Insurance Company for bifurcation of issues at trial (Dkt 82). I have personal knowledge of the matter set forth herein and if called as a witness would testify as follows:

2. Defendants Thomas Dunlap Insurance Agency, LLC, Thomas Dunlap, and Dean Dunlap requested the right to a jury trial on June 20, 2014 (Dkt 37).

3. The Dunlap defendants have not waived their right to a jury trial.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

Executed this 9th day of March, 2015 at Los Angeles, California.

/s/ Michael T. Ohira